



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Peter Nugent
P.O. Box 77
Colebrook, NH 03576

Re: Nugent Bulk Plant, Colby Street
Colebrook, New Hampshire
Site #200310043 - AST ID # 0000190

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 04-096**

December 30, 2004

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Peter Nugent, pursuant to RSA 146-A:11-c and Env-C 615. The Division is proposing that fines totaling \$6,400 be imposed against Peter Nugent for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302.
2. Peter Nugent is an individual having a mailing address of P.O. Box 77, Colebrook, New Hampshire 03576.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 146-A authorizes the Department of Environmental Services ("DES") to minimize contamination of the waters and land of the state due to improper storage and handling of petroleum by establishing requirements for the operation of aboveground petroleum storage facilities ("AST"). Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Admin. Rules Env-Wm 1402 to establish requirements for the registration, design, installation, operation, maintenance, and monitoring of above-ground petroleum storage facilities.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense upon any person who violates any provision of RSA 146-A or any rule adopted under the provisions of this chapter. Pursuant to RSA 146-A:15, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
3. Peter Nugent is the registered facility owner of two 20,000-gallon vertical aboveground storage tanks ("ASTs"), five 15,000-gallon vertical ASTs, one 15,000-gallon horizontal AST, and one 10,000-gallon horizontal AST that contains gasoline, kerosene, diesel fuel and No. 2 heating oil and are located at the Nugent Bulk Plant, Colby Street, Colebrook, NH ("the

Property”), and further identified by the DES site number 200310043 and the AST identification number 0000190 (“the Facility”).

4. The AST systems at the Facility are subject to the requirements of RSA 146-A and Env-Wm 1402.
5. In a letter dated March 21, 2003, the Division notified the Owner of the requirement to register the ASTs at the Facility with the Division.
6. In a letter dated January 15, 2004, the Division again notified the Owner of the requirement to register the ASTs at the Facility with the Division.
7. On April 28, 2004, a Division inspector conducted a compliance inspection at the Facility. Compliance deficiencies were identified in a Division letter dated May 7, 2004, issued to the Owner, and notifying the Owner that compliance was to be achieved within 45-days of the date of the letter in order to avoid enforcement action per RSA 146-A:15 and Env-C 600 for those deficiencies.
8. In a letter dated June 23, 2004, the Division again notified the Owner of the deficiencies identified during the April 28, 2004 inspection, and notified the Owner that enforcement action in the form of proposed fines would be initiated if the deficiencies were not corrected within 30-days.
9. Env-Wm 1402.05 requires the owner of any AST facility to register all AST systems at the facility with the DES.
10. Env-Wm 1402.12 requires the owner of any AST system taken out of service to comply with the out of service requirements of Env-Wm 1402.12.
11. Env-Wm 1402.29 requires the owner of all AST systems having a capacity greater than 5,100-gallons to thoroughly drain and clean the interior of the tank and have a detailed interior tank inspection performed by a qualified professional engineer (“P.E.”) or API 653 certified tank inspector by the time the tank is 10-years old or by April 25, 2002, whichever is later.
12. Env-Wm 1402.30 requires that all AST facilities shall have a written Spill Prevention, Control, and Countermeasures Plan (“SPCC Plan”) prepared in accordance with Title 40 of the Code of Federal Regulations, Part 112, be current, accurately reflect all AST systems at the facility, and be certified by a P.E.
13. Env-Wm 1402.35(a) required that all AST systems installed prior to April 25, 1997, have overfill protection consisting of a product level gauge in accordance with Env-Wm 1402.24(a) and a high level alarm in accordance with Env-Wm 1402.24(b) by April 25, 2000.
14. Env-Wm 1402.35(c) requires that all AST systems installed prior to April 25, 1997, have tank markings as described in Env-Wm 1402.18(e) by April 25, 2000.

IV. Violations Alleged and Proposed Administrative Fines

1. Mr. Nugent has violated Env-Wm 1402.5 by failing to register the nine AST systems at the Facility. For this violation, Env-C 615.02(a) specifies a fine of \$1,500 per requirement that is not met per system. While each AST constitutes a separate violation, the Division is seeking a fine for only one violation at this time.
2. Mr. Nugent has violated Env-Wm 1402.12 by failing to properly take the two horizontal AST systems out of service. For this violation, Env-C 615.04(c) specifies a fine of \$400 per requirement that is not met per system. While each AST constitutes a separate violation, the Division is seeking a fine for only one violation at this time.
3. Mr. Nugent has violated Env-Wm 1402.29 by failing to perform detailed interior tank inspections on the seven vertical AST systems by April 25, 2002. For this violation, Env-C 615.04(l) specifies a fine of \$500 per requirement that is not met. While each AST constitutes a separate violation, the Division is seeking a fine for only one violation at this time.
4. Mr. Nugent has violated Env-Wm 1402.30 by failing to prepare and implement a SPCC Plan prepared in accordance with 40 CFR Part 112. For this violation, Env-C 615.05(b) specifies a fine of \$2,000 per 3-calendar-month period or portion thereof that the plan is not prepared or implemented, as applicable, after the deadline specified in writing by the Division. While each AST constitutes a separate violation, the Division is seeking a fine for only one violation at this time.
5. Mr. Nugent has violated the overfill prevention requirements of Env-Wm 1402.35(a) by failing to install a gauge or other measuring device on two of the vertical AST systems, and for failing to have a high level warning alarm that is both audible and visible to the person controlling the transfer of oil on any of the vertical AST systems. For these nine violations, Env-C 615.03(j) specifies a fine of \$1,500 per standard that is not met per device required. While each AST constitutes a separate violation, the Division is seeking a fine for only one violation at this time.
6. Mr. Nugent has violated Env-Wm 1402.35(c) by failing to mark the vertical AST systems with the safe fill height of the tank, the product stored, and the NFPA symbol for a total of seven marking violations. For this violation, Env-C 615.03(c) specifies a fine of \$500 for each standard that is not met per tank. While each AST constitutes a separate violation, the Division is seeking a fine for only one violation at this time.

The total fine being sought is \$6,400.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Mr. Nugent is required to respond to this notice. Please respond no later than January 31, 2005, using the enclosed colored form.

1. If Mr. Nugent would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If Mr. Nugent chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Mr. Nugent wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Mr. Nugent's interest in settling.

Mr. Nugent is not required to be represented by an attorney. If Mr. Nugent chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Mr. Nugent committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Mr. Nugent committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Mr. Nugent proves, by a preponderance of the evidence, applies in this case:**

1. The violation was a one-time or non-continuing violation, **and** Mr. Nugent did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Mr. Nugent did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Mr. Nugent was making a good faith effort to comply with the requirement that was violated.
3. Mr. Nugent has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Mr. Nugent's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Mr. Nugent committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Mr. Nugent's opportunity to present testimony and evidence that Mr. Nugent did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Mr. Nugent has any evidence, such as photographs, business records or other documents that believe show that Mr. Nugent did not commit the violation or that otherwise support Mr. Nugent's position, Mr. Nugent should bring the evidence to the hearing. Mr. Nugent may also bring witnesses (other people) to the hearing to testify on Mr. Nugent's behalf.

If Mr. Nugent wishes to have an informal meeting to discuss the issues, Mr. Nugent must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.state.nh.us). If Mr. Nugent has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

COPY

Anthony P. Giunta, P.G., Director
DES Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Gretchen R. Hamel, Administrator, DES Legal Unit
Michael J. Walls, Assistant Commissioner DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Lynn A. Woodard, P.E., WMD UST Supervisor
Mike Juranty, DES WMD
Mark Antonia, WMD

***** RETURN THIS PAGE ONLY *****

**PETER NUGENT IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN January 31, 2005

Please check the appropriate line and fill in the requested information below.
APPEARANCE On behalf of Peter Nugent

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I request to have a **prehearing conference** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Peter Nugent

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,000 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:
Department of Environmental Services ~ Legal Unit
Attn: Michael Sclafani, Legal Assistant
29 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



6 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.state.nh.us

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Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made**...the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact James Ballentine, Enforcement Paralegal, DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.